UNITED
NATIONS

E

Economic and Social
Council

Distr.
GENERAL

E/CN.4/2000/36
19 April 2000

Original: ENGLISH

COMMISSION ON HUMAN RIGHTS
Fifty-sixth session
Agenda item 9

QUESTION OF THE VIOLATION OF HUMAN RIGHTS AND FUNDAMENTAL FREEDOMS IN ANY PART OF THE WORLD

Situation of human rights in the Sudan

Note by the secretariat

Introduction

1. For compelling personal reasons the Special Rapporteur on the situation of human rights in the Sudan is unable to present his report to the Commission on Human Rights at its fifty-sixth session. The Special Rapporteur has reviewed the situation of human rights in the Sudan, has undertaken a mission to the country and has prepared a draft report but, owing to a family emergency, has not been able to finalize the report in time for its submission to the Commission. The complete report will be submitted to the General Assembly at its fifty-fifth session.

2. The following summary of the draft report of the Special Rapporteur is submitted to the Commission with the permission of the Special Rapporteur.

I. VISIT TO THE COUNTRY

3. On 23 September 1999, the Permanent Mission of the Republic of the Sudan addressed a letter to the Special Rapporteur inviting him to visit the country and expressing the firm commitment of the Government of the Sudan to provide him with constructive assistance and cooperation during the visit. In his reply of 27 December 1999, the Special Rapporteur confirmed his intention to visit the country and proposed the following objectives for the

mission: (i) to examine with the authorities the new Constitution and any new legislation adopted; (ii) to look into the implications of the recent declaration of a state of emergency; (iii) to assess the progress made by the recently established Committee for the Eradication of Abductions of Women and Children (CEAWC).

4. The visit, initially scheduled for November 1999, had to be postponed for reasons not imputable either to the Special Rapporteur or to the Government of the Sudan. The visit eventually took place from 19 February to 3 March 2000. The Special Rapporteur concluded his mission with a brief visit to Kenya.

5. The Special Rapporteur acknowledges the very good cooperation he received from the Government of the Sudan throughout his visit. He particularly thanks the Rapporteur of the Advisory Council for Human Rights, Mr. Ahmed el-Mufti, who provided decisive support in organizing the programme, as well as the Office of the Resident Coordinator in Khartoum, UNICEF and Operation Lifeline Sudan (OLS) in both the Sudan and Kenya.

6. However, the Special Rapporteur deeply regrets that, owing to a total flight ban imposed by the Government for undisclosed reasons, he was prevented from travelling from Lokichoggio (Kenya) to the territory controlled by the Sudan People's Liberation Army (SPLA) in order to familiarize himself with the plight of civilians fleeing violence in the oil exploration zones.

II. POLITICAL AND SOCIAL CONTEXT IN WHICH THE MISSION TOOK PLACE

7. On 12 December 1999, President Omar Al-Bashir declared a state of emergency throughout the country, for a period of three months, under articles 43 (d) and 131 of the Constitution. Emergency Order No. 1 suspended articles 56, 57, 59 and 60 (2) and (3) of the Constitution. President Al-Bashir also issued a Republican Decree on the expiry of the National Assembly term as of Monday, 13 December 1999, in accordance with articles 43, 39 and 72 of the Constitution. The decision to declare a state of emergency was challenged in the Constitutional Court, which dismissed the challenge on 8 March 2000.

8. During the past year, the Government of the Sudan has undertaken efforts to continue to improve relations with neighbouring countries, as well as other members of the international community.

III. CONCLUSIONS AND RECOMMENDATIONS

9. As already indicated in his previous report to the Commission on Human Rights, the Special Rapporteur wishes to emphasize the very high importance he attaches to the stated will of the Government to bring early peace to the country and to promote transition to democracy. These two objectives are inextricably linked to the promotion and protection of human rights and fundamental freedoms. In his view, the peace process currently under way should therefore include a human rights component, in order to reflect the aspirations of all segments of Sudanese society. The Special Rapporteur notes that the aerial bombing of a school at Kaouda in the Nuba Mountains, on 8 February 2000, which killed a number of children, constituted yet another tragic reminder of the necessity to link human rights concerns with the efforts for peace.

A. Constitution and transition to democracy

10. During his visit to Khartoum the Special Rapporteur was pleased to observe signs of greater political dialogue and the enjoyment to a broader degree of the freedoms of expression, press and assembly. According to many observers, this is a consequence of changes in the balance of power within the official party. The Special Rapporteur trusts that this encouraging development may have a favourable impact on the transition to a multi-party society and contribute to the consolidation and enjoyment of human rights.

11. In spite of this new climate, the Special Rapporteur continues to be seriously concerned about the continuation of patterns adversely affecting human rights.

(a) The official party continues to maintain unrelenting control over all segments of society and is strongly reluctant to open its institutions to a greater degree of democratic participation, as evidenced by the curtailment of the rights of opposition students;

(b) The independence of the judiciary is often undermined;

(c) There is no system of control of executive actions and activities;

(d) Last, but not least, the fundamental institutions and legal framework remain, for the time being, basically unchanged, as does the role of the security organs. In this connection, the Special Rapporteur expressed to the authorities his serious concern with regard to the New Security Forces Act, which empowers security organs to infringe international standards on issues relating to freedom and fair trial.

12. The Special Rapporteur strongly believes that it is imperative to seize the opportunities offered by the new situation in order to establish the foundations for a sustainable democracy based on multi-party participation. In this connection, he emphasizes the need for normalization and transition from the emergency regime to a situation where the rule of law clearly prevails. The independence of the judiciary, control of the security organs and a system of checks and balances also need to be ensured. Also, he wishes to reiterate the recommendation contained in his interim report in this respect, namely that the previous emergency legislation should be revised in accordance with the stated will of the Government and in full conformity with international human rights standards (A/54/467, paras. 146 and 150).

13. The Special Rapporteur has continued to receive - although in declining numbers - allegations of cases of torture, arbitrary detention and other abuses of human rights. The Special Rapporteur is particularly concerned at reports of the suspension or dismissal of students from universities and deems that students, regardless of their political affiliation, should be allowed to participate in democratic student unions that represent them.

14. In connection with the frequent allegations of torture brought to his attention during his mandate, the Special Rapporteur is very concerned about the lack of official action to investigate and sanction reported abuses. He is also concerned about the lack of action to implement

measures aimed at the prevention of torture, as recommended in paragraphs 176 and 177 of his previous report to the Commission (E/CN 4/1999/38/Add 1). Consequently, such recommendations remain valid.

B Respect of human rights and international humanitarian law during the conflict

15. The Special Rapporteur is of the view that the prolonged war in the Sudan mainly affects the civilian population, whose plight should be regarded as one of the most important human rights concerns facing the international community. Although of rather low intensity, the war has a disproportionately high impact on the civilian population, in particular women and children, who become hostages or targets of the belligerents. Consistent and undisputed evidence indicates that the war is being conducted in disregard of human rights and humanitarian law principles, and that violations are perpetrated by all parties, albeit with varying degrees of responsibility, the greater portion being attributable to the Government.

16. The Special Rapporteur was shocked to gather more information about the disregard of international humanitarian standards by both parties, a situation which inflicts unlimited suffering and injustice on the civilian population in the war zones and which constitutes by far the most serious threat to human rights in the Sudan.

17. The Special Rapporteur has found that the Government is continuing to practise indiscriminate bombing, which appears to have intensified during recent weeks, with a heavy toll of civilians. In this connection, the Special Rapporteur strongly condemns the bombing of the school at Kaouda in the Nuba Mountains, as well as the heinous practice of bombing civilians as they gather to collect humanitarian food aid, mainly in the Upper Nile zone.

18. He also regrets that the Government has forced civilians of ethnic Nuer populations to relocate, with the purpose of ensuring military control of oil industry operations in Upper Nile. According to consistent reports, this practice is allegedly followed by the settlement of ethnic Baggaara groups.

19. The Special Rapporteur expresses concern at the use of oil industry airstrips for military purposes and at the practice of seriously hindering humanitarian assistance, particularly in western Upper Nile, mainly by restricting access by air to many humanitarian distribution sites, as well as by imposing flight bans on certain occasions.

20. The Special Rapporteur regrets that the Government is not taking measures to prevent or sanction the raids against civilian populations, particularly in Bahr el-Ghazal, that, according to reports, continue to take place, often resulting in abductions and subsequent forced labour of women and children. In this connection, the Special Rapporteur had expectations that with the creation of CEAWC there would be no recurrence of raids against the civilian population. However, he learnt with dismay that on 21 February 2000 new raids, allegedly by murahalleen, took place in eastern Aweil and Twic counties, northern Bahr el-Ghazal, with a toll of 16 civilians killed and, according to information received, 12 abducted. It was also reported that some villages were looted and burnt.

21. Furthermore, the Special Rapporteur is convinced that the oil issue, in western Upper Nile, lies at the heart of the conflict and believes that it is not fair for the civilian population to be once again the most affected target in this scenario. Oil exploitation has resulted in the exacerbation of the war. The Special Rapporteur believes that, as idealistic as this may seem in the present circumstances, any solution will have to be based on a wide consensus of all affected parties. He also believes that, as a matter of urgency, steps should be taken to address the current situation. In this connection, he recommends that unhindered humanitarian access be granted to the areas of concern. He also recommends that all efforts be made to facilitate the return of displaced people to their areas of origin. He further recommends that the use of oil facilities for military purposes come to an end.

22. During the mission, the Special Rapporteur received expressions of concern at the deterioration of the human rights situation in the Nuba Mountains as a result of action by the two parties.

23. The Special Rapporteur equally condemns SPLM/A practices in violation of human rights and humanitarian law, such as the use of civilian installations for military purposes, recruitment of child soldiers, planting of mines, food diversion and, particularly, expresses concern at the situation in Eastern Equatoria. Lastly, he expresses serious concern at the attempt by the Sudan People's Liberation Movement/Army (SPLM/A) to politicize humanitarian aid by imposing restrictions on its delivery.

24. On the basis of credible reports, the Special Rapporteur concludes that the SPLM/A is behaving as an occupying army in Eastern Equatoria and is therefore incapable of generating any trust in the local Didinga population. More specifically, it was reported that people are often mistreated and sometimes feel as if they were in a foreign country. Several incidents reported to the Special Rapporteur during his mission exacerbated the troubled relations between the Didinga and the SPLM/A to the point of no return.

25. Several allegations were received to the effect that the SPLM/A is responsible for forcefully recruiting children. More specifically, it was reported that in December 1999, in the villages of Lorus and Nimule, Eastern Equatoria, the SPLM/A forcefully took a number of children to train them as soldiers. It was reported that up to 27 schools have been closed in the region and children therefore lack any kind of education. The Special Rapporteur raised the issue of forceful recruitment of children with the SPLM/A representatives with whom he met in Nairobi. The SPLM/A representatives denied all allegations, defining the SPLM/A as a voluntary army, open to all who decided to join it, and claiming that in fact efforts are currently in place to demobilize any children under the age of 16 and put them in school.

26. The Special Rapporteur assesses that there are some positive developments that need to be highlighted, commended and supported by the international community. More specifically, he was particularly encouraged to learn of the conclusion of the tripartite Agreement on the Implementation of Principles Governing the Protection and Provision of Humanitarian Assistance to the War Affected Civilian Population, signed by the Government of the Sudan, the SPLM/A and the United Nations-Operation Lifeline Sudan, by which the parties reached consensus on some human rights and humanitarian issues.

27. The Special Rapporteur was pleased to note the importance given by both parties to active participation in International Committee of the Red Cross (ICRC) training courses on humanitarian law and was particularly impressed at the tireless humanitarian efforts of international and domestic NGOs under the OLS umbrella. In this connection, he acknowledges the improvement in the attitude of the humanitarian agencies of both parties to humanitarian assistance, in spite of the aforementioned shortcomings.

C. The creation of CEAWC

28. The Special Rapporteur continues to believe, as expressed in his interim report to the General Assembly, that the establishment of CEAWC is a concrete indication of the political will of the Government of the Sudan to deal with abductions. He welcomes the initiative and will closely monitor the situation in order to report thereon.

29. The Special Rapporteur feels strongly that the solution of this issue must include, on the one hand, the retrieval of the abductees followed by their reunification with their families and, on the other hand, energetic measures to end and prevent unlawful practices, such as raids by armed militias, perpetrated against women and children.

30. The Special Rapporteur was particularly impressed by the significant dialogue currently taking place between the Dinka and Baggaara tribes, despite the complexity of the problems that remain to be solved, and by the courage shown by the CEAWC authorities in discharging the fundamental task of helping the victims of the heinous practice of abduction and forced labour, which is an indication of the willingness of the Government to tackle this issue.

31. The Special Rapporteur was highly impressed with the quality of the top CEAWC authorities, particularly Dr. Mufti and the Chairman of the Dinka Committee, Mr. James Aguer. In this connection, the Special Rapporteur considers that the work of the Chairman of the Dinka Committee should continue with full support from the Government and regrets information received that Mr. Aguer has suffered several abuses in the discharge of his mandate. Likewise, the Special Rapporteur is seriously concerned about threats against UNICEF personnel and activities.

32. The Special Rapporteur believes that the large-scale practice of abduction and forced labour can no longer be explained exclusively in terms of conflict over resources, water and pastures. He considers that this heinous practice is linked with war strategies.

33. The Special Rapporteur feels that the work of CEAWC would benefit from a clear stand by government officials, openly supporting it, which has not been the case so far. A stronger commitment by the political leadership would generate a sense of urgency and would contribute to creating a conducive environment, which would make the work of CEAWC more meaningful and effective. In this connection, he further encourages the media to sensitize the public, thus putting further pressure on those responsible for it.

D. The peace process and human rights

34. The Special Rapporteur wishes to highlight once again the importance of the efforts to promote peace in the Sudan. He reiterates, however, that human rights must be part of that agenda and not be confined to the post-war scenario. In this connection, the Special Rapporteur wishes to recall that the Declaration of Principles (DOP) agreed to by the parties also refers to human rights as part of the process. In addition, the Special Rapporteur learned with satisfaction that in a recent draft paper circulated during the last Intergovernmental Authority on Development (IGAD) talks, clear reference is made to point 3.6 of the DOP whereby the parties agree that human rights as internationally recognized shall form part and parcel of this arrangement.

35. Finally, the Special Rapporteur reiterates his firm belief in the great importance and transcendental value of a "people to people" approach to pave the way to peace and help to solve inter-tribal problems.

E. International cooperation in the field of human rights

36. The Special Rapporteur believes that cooperation in the field of human rights implies that the competent authorities should determine the areas which require improvement and search for remedies. In this connection, he expresses concern at the practice of concealment and denial of human rights which both parties to the conflict commonly tend to resort to and which opens the way to a culture of impunity.

37. It is against this background that the Special Rapporteur reiterates his recommendation of the usefulness of promoting an agreement between the Government of the Sudan and the Office of the High Commissioner for Human Rights and expresses satisfaction at the outcome of the OHCHR Needs Assessment Mission, which was undertaken in September 1999. While he was pleased to learn of the positive response of the Government of the Sudan, the Special Rapporteur believes that the modalities proposed by the Government in terms of staffing are not adequate to reach the level of effective achievement of the goals of the Agreement. He hopes that negotiations will continue to this end, and that ways and means to cooperate fully will be agreed upon rapidly.

38. Finally, the Special Rapporteur would like to thank OHCHR for the support provided to him in the discharge of his mandate.